



VIA OVERNIGHT & ELECTRONIC MAIL

September 7, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Petition of Verizon New England Inc. for Arbitration of an Amendment To Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*, D.T.E. 04-33

Dear Ms. Cottrell:

Enclosed for filing are Conversent's Reply Comments Regarding the FCC Interim Rules Order. Please contact me if you have any questions. Thank you.

Very truly yours,

A handwritten signature in blue ink that reads 'Gregory M Kennan'.

Gregory M. Kennan
Director of Regulatory Affairs & Counsel
Conversent Communications of
Massachusetts, LLC

GMK/cw

Enclosure

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Petition of Verizon New England Inc. for
Arbitration of an Amendment To
Interconnection Agreements with Competitive
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CONVERSENT'S REPLY COMMENTS REGARDING THE INTERIM RULES ORDER

Verizon Massachusetts' (Verizon MA) suggestion that the Department continue this arbitration with respect to the UNEs governed by the *Interim Rules Order*¹ is premature. Verizon MA, by its own admission, has not proposed contractual provisions reflecting the interim rules. Verizon MA's Comments, Sept. 1, 2004, at 4-5.² Unless and until it does, and the parties have attempted and failed to reach agreement on an appropriate amendment, there is nothing to arbitrate.

Verizon MA correctly quotes the *Interim Rules Order* to the effect that "the FCC has 'expressly preserve[d] incumbent LECs' contractual prerogatives to initiate change of law proceedings consistent with their governing interconnection agreements." Verizon MA's Comments at 4. But that does not mean that the parties and Department should proceed directly to arbitration. What the FCC meant was precisely what it said — the parties may proceed in accordance with the change-of-law provisions in the interconnection agreements. In the

¹ *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-33, Order and Notice of Proposed Rulemaking, FCC 04-179 (August 20, 2004) ("*Interim Rules Order*").

² "Because the FCC has directed that the results of change-of-law proceedings 'must reflect the transition regime' set forth in the *Interim Rules Order*, Verizon MA will need to modify that proposal to reflect the interim rules.

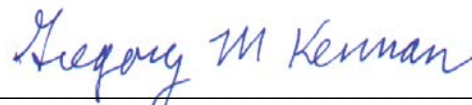
paragraph of the *Order* subsequent to that quoted by Verizon MA, the FCC stated, “[W]e do *not* prohibit incumbents from *initiating* change of law proceedings that presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport, so long as they reflect the transition regime set forth below” *Interim Rules Order*, ¶ 23 (first emphasis in original, second emphasis added).

Conversent Communications of Massachusetts, LLC (Conversent) is unaware of any interconnection agreement in which a party *initiates* a change-of-law proceeding by jumping right into arbitration. As Verizon MA partially but incompletely admits (p. 4), many interconnection agreements, like Conversent’s, require amendment *after negotiation* to effectuate changes in law. Indeed, requiring such negotiations (where the interconnection agreement calls for them) is in the interests of administrative efficiency, for they will make arbitration of the interim rules provisions unnecessary if the parties reach agreement.

Thus, the Department should not proceed with arbitration of provisions designed to reflect the *Interim Rules Order* unless and until Verizon complies with the appropriate procedures to amend interconnection agreements or otherwise to effectuate changes in law.³

September 7, 2004

Respectfully Submitted,



Scott Sawyer
 Gregory M. Kennan
 Conversent Communications of Mass., LLC
 24 Albion Road, Suite 230
 Lincoln, RI 02865
 401-834-3326 Tel.
 401-834-3350 Fax

Verizon MA will file that modified amendment no later than September 14, 2004, along with a proposed arbitration schedule.” *Id.*

³ To the extent that Verizon MA seeks to effectuate the change in law by other means, such as tariff revisions, it also must follow the appropriate procedure and not jump the gun by prematurely requesting arbitration.